

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:06CR72
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
SEAN L. ZELLERS,)	
)	
Defendant.)	

The Court has received the Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 32, 35). The government has adopted the PSR. See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The parties have both objected to the quantity of controlled substance attributable to the Defendant in ¶¶ 29, 30 and 39 and the corresponding base offense level appearing in the PSR. The plea agreement requires a base offense level of 26. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld and the base offense level should be calculated as level 26.

The Defendant also objected to ¶¶ 69, seeking to add recent medical information. The objection is denied as the information does not change the sentencing guideline calculation. If the Defendant requests placement at a medical facility the request will be discussed at sentencing.

Finally, the Defendant objects to ¶ 88. The objection is denied, as the Court is not at liberty to change the probation officer's opinion regarding the impact of the plea agreement.

IT IS ORDERED:

1. The Court's tentative findings are that the government's objections (Filing No. 32) to the PSR are granted;
2. The Court's tentative findings are that the Defendant's objections (Filing No. 35) to the PSR are granted in part and denied in part:
 - a. the objections to ¶¶ 29, 30 and 39 are granted;
 - b. the objections to ¶¶ 69 and 88 are denied;
3. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
4. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 4 of this order, my tentative findings may become final;
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 2nd day of October, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge